1776

SUPREME COURT OF THE UNITED STATES.

No. 171.

ROBERT M. HARRISON, U. S. CONSUL, PLAINTIFF,

vs.

GEORGE C. VOSE.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MAINE.

UNITED STATES OF AMERICA,
District of Maine, ss:
Circuit court of the United States, first circuit, October term, 1847.

ROBERT M. HARRISON, U. S. consul, plaintiff,
vs.
GEORGE C. VOSE.

This was an action of debt, qui tam, to recover a penalty of five hundred dollars, prescribed in and by the 2d section of act of Congress of February 28, 1803, entitled "An act supplementary to the act concerning consuls and vice consuls, and for the further protection of American seamen."

The writ and pleadings are to be copied, to make a part of this case, A and B.

The facts in proof in the case were as follows:

The brig Openango, belonging to citizens of the United States, Geo. C. Vose, (the defendant,) master, sailed from Eastport, in the State of Maine, in the month of July, 1844, with a cargo of lumber, consigned to Messrs. Darrell & Barclay, merchants, of Kingston, in the island of Jamaica, and arrived at Port Royal, in the harbor of Kingston aforesaid, on the fourth day of September of the same year, and came to anchor at about a quarter of a mile from the town, but did not go up to the town, nor come to an entry, nor discharge any part of her cargo, nor take in cargo or passengers at Kingston, nor do any business, except to communicate with his consignees; by whom the master of said brig was informed that his cargo was sold, deliverable at Savannah la Mar.

The defendant on his arrival at Kingston, or at any time while said brig lay at anchor at Kingston, did not deposite his register, sea letter,

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or Mediterranean passport, with the plaintiff, who was the United States consul at said port of Kingston, at the time of the arrival of said brig there, as aforesaid.

After communicating with said consignees, the master of said brig, on the fifth day of said month of September, sailed in said brig from said port at Kingston to a place in said island of Jamaica called Savannah la Mar, where she arrived in due season, came to an entry, discharged her cargo, and where the said master deposited the register, sea letter, and passport aforesaid, with the vice consul of the United States at said place called Savannah la Mar. One of the defendant's witnesses testified that said brig arrived at Kingston in the afternoon of the 4th of September, and sailed from Kingston the next morning after her arrival there, and as soon as the wind would permit.

It was in proof, from one of the Kingston pilots, that the master of a vessel arriving at Kingston is compelled by law to report his arrival at the custom house, whether his cargo had been previously sold, deliverable at another port or not, but was under no necessity of coming to an entry.

At the trial the following question occurred upon the foregoing testimony, to wit:

Whether it was the duty of the defendant, who was master or commander of the ship or vessel called the Openango, on his arrival at Kingston, in the island of Jamaica, to deposite his register, sea letter, and Mediterranean passport, with the United States consul at said port.

Upon which question the judges of the said circuit court were opposed in opinion; and thereupon, upon the motion of the district attorney, for and in behalf of the United States, it was ordered by the court, that the said question, upon which the said judges were so opposed, should be certified, under the seal of the court, to the Supreme Court of the United States at their next session, for a final decision.

LEVI WOODBURY,
Associate Justice of Supreme Court.
ASHUR WARE,
District judge.

A.

DISTRICT OF MAINE, *ss.*

The President of the United States of America, first circuit of the [L. S.] United States, to the marshal of our district of Maine, or his deputy, greeting:

We command you to attach the goods or estate of George C. Vose, of Robbinston, in the county of Washington and State of Maine, and in our said district of Maine, mariner, to the value of one thousand dollars; and, for want thereof, to take the body of the said Vose, (if he may be found in your precinct,) and him safely keep, so that you have him before our circuit court next to be holden at Portland, within and for our district of Maine, on the first day of May next, then and there in our said court to answer unto Robert M. Harrison, consul of the United

States for the port of Kingston, in the island of Jamaica, belonging to the kingdom of Great Britain and Ireland, and a citizen of the United States of America, and who sues for the benefit of the United States in a plea of debt; for that the said Vose, at Kingston aforesaid, on the 4th day of September now last past, being then and there master of the brig Openango, belonging to the port of Robbinston in the State of Maine, and United States of America, and within the collection district of Passamaquoddy, and district of Maine aforesaid, arrived with said brig at said port of Kingston, and on the sixth day of said month set sail from said port without depositing with said consul his brig's register, sea letter, and Mediterranean passport, as by law required to do; whereby the said George Vose has forfeited to the said Robert M. Harrison, consul as aforesaid, the sum of five hundred dollars for the benefit of the United States, according to the statute in such case made and provided.

Yet, though requested, said George C. Vose has not paid said sum, but neglects so to do, to the damage of said plaintiff, as he says, the sum of five hundred dollars, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness the honorable Roger B. Taney, at Portland, the eighth day of November, in the year of our Lord one thousand eight hundred and forty-four.

J. MUSSEY, *Clerk*.

December 26, 1844.

DISTRICT OF MAINE, *ss:*

By virtue of the within precept I have attached all the right, title, and interest, the within named George C. Vose has in a brig called the Openango, of about one hundred and forty-seven tons burden, and at the same time gave him a summons in hand for his appearance at court.

VIRGIL D. PARRIS,
Marshal of Maine.

B.

UNITED STATES CIRCUIT COURT, *Maine district:*

ROBERT M. HARRISON
vs.
GEORGE C. VOSE.

And now the said Vose comes and defends, &c., and says that he does not owe the United States in manner as alleged against him; and of this he puts himself upon the country.

W. P. PREBLE & SON,
His solicitors.

And the plaintiff likewise, by

AUGUSTINE HAINES,
U. S. attorney for the district of Maine.